



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michelle J. Pillers et al.

Attorney Docket No. PMAI-1-1401

Serial No.: 09/479,410

Group Art Unit: 3727

Filing Date: January 6, 2000

Examiner: Robin A. Hylton

Assignee: Pacific Market, Inc.

Title: TWIST LID FOR DRINKWARE

Commissioner for Patents

Mail Stop Petition

P.O. Box 1450

Alexandria, VA 22313-1450

DECLARATION OF BRENDA RUTHRAUFF

I, Brenda Ruthrauff, declare as follows:

1. I am the legal assistant to Michael J. Folise, the attorney authorized to prosecute this application.
2. Exhibit A is a true and correct copy of the Notice of Abandonment as found in the above-referenced file.
3. Exhibit B is a true and correct copy of the Change of Correspondence Address dated January 10, 2003 as found in the above-referenced file.
4. Exhibit C is a true and correct copy of the return postcard evidencing Exhibit 3 above as found in the above-referenced file.
5. Exhibit D is a true and correct copy of the Status Inquiry dated March 4, 2003 as found in the above-referenced file.
6. Exhibit E is a true and correct copy of the return postcard for Exhibit D as found in the above-referenced file.
7. Exhibit F is a true and correct copy of the remailed Notice of Abandonment dated October 27, 2004 as found in the above-referenced file.

I am aware that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing thereon. I declare that all statements are of my own knowledge and are true and that all statements made on information and belief are believed to be true.

Dated: February 2, 2006 Signed: Brenda Ruthrauff
Brenda Ruthrauff



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

730126401

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/479,410	01/06/2000	MICHELLE J. PILLERS	PA19.P15	3004
25315	7590	10/27/2004		
BLACK LOWE & GRAHAM, PLLC 701 FIFTH AVENUE SUITE 4800 SEATTLE, WA 98104				
EXAMINER HYLTON, ROBIN ANNETTE				
ART UNIT		PAPER NUMBER		
3727				

DATE MAILED: 10/27/2004

Remailed

Please find below and/or attached an Office communication concerning this application or proceeding.

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NOV 01 2004

Time Received

Black Lowe & Graham PLLC

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/479,410	01/06/2000	MICHELLE J. PILLERS	PA19.P15	3004

7590

02/09/2004

RICHARDSON & FOLISE
1200 FIFTH AVENUE
SUITE 1801
SEATTLE, WA 98101

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 02/09/2004

p #19

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TECHNOLOGY CENTER R3700



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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09/479, 410

EXAMINER

ART UNIT	PAPER NUMBER
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NOTICE OF ABANDONMENT

DATE MAILED:

p #19
ABANDONMENT
CONTACT PERSON IS:
TOM HAWKINS
305-8380

This application is abandoned in view of:

- ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
- ☐ A reply (with Certificate of Mailing or Transmission of _____) was received on _____ which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
- ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- ☐ A reply was received on _____, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).
- ☐ No reply has been received.
- ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85)(or Notice of Publication Fee Due).
- ☐ The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee by 37 CFR 1.18 is \$ _____. The publication fee, if required, by 37 CFR 1.18(d) is \$ _____.
- ☒ The issue fee and publication fee, if applicable, have not been received.
- ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).
- ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
- ☐ No corrected drawings have been received.
- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.
- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.
- ☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☐ The reason(s) below: _____

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Respond to the Notice of Abandonment by one of the following:

Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f). In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA
22313-1450

By facsimile: 703-305-8755 or 703-305-4372

Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
(Mark attention of a particular office or individual)

By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile: 703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/479,410
Filed : January 6, 2000
For : TWIST LID FOR DRINKWARE

Docket No. : 730126.401
Date : January 10, 2003

Commissioner for Patents
Washington, DC 20231

CHANGE OF CORRESPONDENCE ADDRESS

Commissioner for Patents:

The undersigned attorney of record requests that the correspondence address in the above-identified application be changed to:



00500

PATENT TRADEMARK OFFICE

Michael J. Folise
Seed Intellectual Property Law Group PLLC
701 Fifth Avenue, Suite 6300
Seattle, Washington 98104-7092
Phone: (206) 622-4900
Fax: (206) 682-6031

Respectfully submitted,
Seed Intellectual Property Law Group PLLC

Michael J. Folise
Registration No. 31, 952

850003.00002

MJF:mt

Date Stamp

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

SENT: January 17, 2003

Kindly acknowledge receipt of the below-listed documents by placing
your receiving stamp hereon and mailing:

Change of Correspondence Address Forms.

D:\N\Portbl\Manage\MICHELLE\MJ49977_1.DOC

Seed Intellectual Property Law Group PLLC



01-21-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #30

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JAN 30 2003

**SEED INTELLECTUAL PROPERTY
LAW GROUP PLLC**

SEED

INTELLECTUAL PROPERTY LAW GROUP PLLC

701 FIFTH AVENUE, SUITE 6300

SEATTLE, WA 98104-7092



76

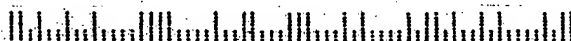


EXHIBIT C

Please type a plus sign (+) inside this box → ☐

PTO/SB/21 (08-00)


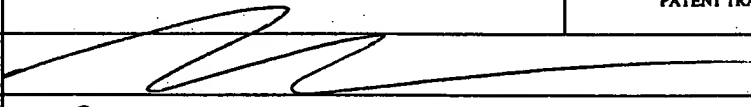
Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM (To be used for all correspondence after initial filing)	Application Number	09/479,410
	Filing Date	January 6, 2000
	First Named Inventor	Michelle J. Pillers
	Group Art Unit	3727
	Examiner Name	Robin Annette Hylton
	Attorney Docket No.	730126.401

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement; Form PTO-1449 <input type="checkbox"/> Cited References <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts under 37 C.F.R. 1.52 or 1.53 <input type="checkbox"/> Response to Missing Parts/Incomplete Application	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Request for Corrected Filing Receipt <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation, Change of Correspondence Address <input type="checkbox"/> Declaration <input type="checkbox"/> Statement under 37 CFR 3.73(b) <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Small Entity Statement <input type="checkbox"/> Request for Refund	<input type="checkbox"/> CD(s), Number of CD(s) _____ <input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input checked="" type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Return Receipt Postcard <input type="checkbox"/> Additional Enclosure(s) (please identify below): Copy of Status Letter _____ Return envelope _____ _____
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Individual Name	Michael J. Folise	 00500 PATENT TRADEMARK OFFICE
Signature		
Date	March 4, 2000	

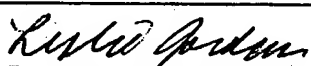
CERTIFICATE OF MAILING		
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on the date specified below.		
Typed or printed name	Leslie Jordan	
Signature		Date: 3/4/2000

EXHIBIT D

PATENT

I hereby certify that on the date specified below, this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to the Commissioner for Patents, Washington, DC 20231.

3/4/2003
Date

Leslie Jordan
Leslie Jordan

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Michelle J. Pillers et al.
Application No. : 09/479,410
Filed : January 6, 2000
For : TWIST LID FOR INSULATED BEVERAGE CONTAINER

Examiner : Robin Annette Hylton
Art Unit : 3727
Docket No. : 730126.401
Date : March 4, 2003

Commissioner for Patents
Washington, DC 20231

STATUS INQUIRY

Commissioner for Patents:

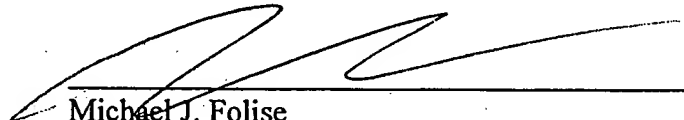
More than three months have passed since the filing of a response in the above-identified application on November 6, 2002. No further communication has been received from the Patent and Trademark Office indicating action in this matter.

Applicants request that the undersigned attorney of record be advised of the present status of the above-identified application by checking the appropriate box below. A stamped return-addressed envelope is enclosed.

Respectfully submitted,

Michelle J. Pillers et al.

Seed Intellectual Property Law Group PLLC


Michael J. Folise
Registration No. 31,952

MJF:lj

STATUS INQUIRY REPLY

Application No. is currently

☐ Assigned to Group _____ and awaits:

☐ Action by the Examiner.

☐ Applicants' response to the Office Action mailed
_____.

Enclosures:

Postcard

Form PTO/SB/21

Copy of Status Inquiry

Return envelope

701 Fifth Avenue, Suite 6300
Seattle, Washington 98104-7092
Phone: (206) 622-4900
Fax: (206) 682-6031

C:\NrPortb\NManage\LESLIE\361196_1.DOC: DOC-STATUS INQ PA19.P15

730126.401
MJF:lj

colce

Commissioner for Patents
Washington, DC 20231

SENT: March 4, 2003



Kindly acknowledge receipt of the below-listed documents by placing your receiving stamp hereon and mailing:

PTO/SB/21; Status Inquiry (and copy); return envelope; in re: Michelle J. Pillers et al., USAN 09/479,410, filed January 6, 2000, for TWIST LID FOR INSULATED BEVERAGE CONTAINER.

C:\NrpPortb\NManage\LESLIE\361610_1.DOCSEED INTELLECTUAL PROPERTY LAW GROUP PLLC

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MAR 17 2003

SEED INTELLECTUAL PROPERTY
LAW GROUP PLLC



SEED

INTELLECTUAL PROPERTY LAW GROUP PLLC

701 FIFTH AVENUE, SUITE 6300

SEATTLE, WA 98104-7092

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EXHIBIT E



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

730126401

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/479,410	01/06/2000	MICHELLE J. PILLERS	PA19.P15	3004

25315 7590 10/27/2004

BLACK LOWE & GRAHAM, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE, WA 98104

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/27/2004

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Time Received

Black Lowe & Graham PLLC

EXHIBIT F



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Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/479,410	01/06/2000	MICHELLE J. PILLERS	PA19.P15	3004

7590 02/09/2004

RICHARDSON & FOLISE
1200 FIFTH AVENUE
SUITE 1801
SEATTLE, WA 98101

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 02/09/2004

p #19

Please find below and/or attached an Office communication concerning this application or proceeding.

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MAR 02 2004
TECHNOLOGY CENTER R3700



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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09/479, 410

EXAMINER

ART UNIT	PAPER NUMBER
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NOTICE OF ABANDONMENT

DATE MAILED:

^{p #19}
ABANDONMENT
CONTACT PERSON IS:
TOM HAWKINS
305-8380

This application is abandoned in view of:

- ☐ Applicant's failure to timely file a proper reply to the Office letter mailed on _____.
- ☐ A reply (with Certificate of Mailing or Transmission of _____) was received on _____ which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
- ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
- ☐ A reply was received on _____, but it does not constitute a proper reply, or a *bona fide* attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in the last box below).
- ☐ No reply has been received.
- ☒ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
- ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85) (or Notice of Publication Fee Due).
- ☐ The submitted fee of \$ _____ is insufficient. A balance of \$ _____ is due.
The issue fee by 37 CFR 1.18 is \$ _____. The publication fee, if required, by 37 CFR 1.18(d) is \$ _____.
- ☒ The issue fee and publication fee, if applicable, have not been received.
- ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTOL-37).
- ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
- ☐ No corrected drawings have been received.
- ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all the applicants.
- ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon filing of a continuing application.
- ☐ The decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
- ☐ The reason(s) below: _____

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Respond to the Notice of Abandonment by one of the following:

Petition To Withdraw Holding of Abandonment (See MPEP 711.03(c) I) and 37 CFR § 1.181) No fee required

Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action. Any petition under 37 CFR § 1.181, to withdraw the holding of abandonment not filed within 2 months of the mail date of a Notice of Abandonment may be dismissed as untimely under 37 CFR § 1.181(f).

In order for a petition to be granted, the evidence must be sufficient according to one of the following standards:

- 37 CFR § 1.8(b) Certificate of Mailing
- 37 CFR § 1.10 "Express Mail" mailing
- MPEP 503 Postcard Receipt as Prima Facie Evidence

Petition To Withdraw Holding Of Abandonment should be addressed as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Mail Stop: Issue Fee, Alexandria, VA
22313-1450

By facsimile: 703-305-8755 or 703-305-4372

Petition To Withdraw Holding Of Abandonment Based On Failure To Receive Office Action (See MPEP 711.03(c) II). No fee required

Where an applicant contends that the original Notice of Allowance and Issue Fee Due was never received. If adequately supported, the Office may grant the petition and remail the Office action. The showing required establishing non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petition should be addressed to the Technology Center handling the application as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450
(Mark attention of a particular office or individual)

By facsimile: Technology Center numbers posted at <http://www.uspto.gov/september1/faxnotice.htm>

Petition To Revive An Abandoned Application (See MPEP 711.03(c) III)

Where there is no dispute as to whether an application is abandoned (e.g. the applicant's contentions merely involve the cause of abandonment) a petition under 37 CFR § 1.137 (a) unavoidable or (b) unintentionally (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Petitions under 37 CFR § 1.137 should be addressed to the Office of Petitions as follows:

By mail: Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

By hand: Crystal Plaza 4, Rm. 3C23, 2201 Clark Place, Arlington, VA

By facsimile: 703-308-6916

Petition For Revival Of An Application For Patent Abandoned Unavoidably Under 37 CFR § 1.137(a) and Unintentionally Under 37 CFR 1.137(b), forms available at USPTO website – <http://www.uspto.gov>

Note: Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment.